IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 575.

WILLIAM ELMER BROWN, Jr., *Petitioner*,

v.

EDWARD J. O'KEEFE, Receiver of the Union National Bank of Atlantic City, New Jersey, *Respondent*.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

REPLY BRIEF OF RESPONDENT.

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Press of Byron S. Adams, Washington, D. C.

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REPLY BRIEF OF RESPONDENT.

I.

SECTION 57n OF THE BANKRUPTCY ACT, AS AMENDED MAY 27, 1926, HAS NO APPLICATION TO THE INSTANT CASE.

On pages 7-9 of Petitioner's Reply Brief, he contends that a claim could have been filed in the bankruptcy proceedings of Petitioner within the six months' period provided for by section 57n of the Bankruptcy Act, as amended May 27, 1926 ((11 U. S. C., sec. 93n; app. p. 7).

(a) The effect of section 57n.

Section 57n of the Bankruptcy Act is in the nature of a statute of limitations, fixing the time within which claims

must be filed, with the consequence that if not filed within the required time they are barred. *J. B. Orcutt Co.* v. *Green*, 204 U. S., 96, 101, 102; *In re Harris Bros.*, 5 F. Supp. 191, 193; *In re Gellman*, 13 F. Supp. 643, 645; *In re Manning*, 4 F. Supp. 922; *In re Brill*, 52 F. (2d) 636, 637; *In re R. B. Rose Co.*, 43 F. (2d) 446, 447.

McClaine v. *Rankin*, 197 U. S. 154, 160, 162, has established, with reference to the application of statutes of limitation to assessment liability upon national bank stock, that a statute of limitations does not begin to run until the assessment has been levied, in that the liability does not become enforceable until made absolute by the levying of the assessment. See also *Pufahl* v. *Parks*, 299 U. S. 217, 222; *Forrest* v. *Jack*, 294 U. S. 158, 162.

From the foregoing it follows that in view of the fact that on the date of the adjudication of bankruptcy and even at the expiration of the six months' period provided for by the statute for filing claims no assessment had been levied or fixed against the Petitioner upon his stock in the Union National Bank, either by the Comptroller of the Currency or by a court in proceedings under section 65 of 12 U. S. C., the assessment liability was not affected by said section 57n as a statute of limitations.

(b) The filing of bankruptcy proceedings by Petitioner did not raise an obligation on the part of the Atlantic City National Bank to file proceedings against the Union National Bank to establish or enforce its claim against the latter bank and to fix the assessment liability of Petitioner.

The relation between the two banks was fixed by the contract of September 30, 1931. Under that contract it was contemplated that the Atlantic City National Bank would take over all assets of the Union National Bank for liquidation and it was not contemplated by either party that an accounting should be had between the two banks until Sep-

tember 30, 1933. It must also necessarily be inferred that the parties to the contract had in mind that the Union National Bank would go into voluntary liquidation. This position is supported by the fact that at the meeting of the stockholders of the Union National Bank on December 15, 1931, the contract of September 30, 1931, between the two banks was ratified, and the Atlantic City National Bank was designated liquidating agent (R. 35, 36). The foregoing being the situation, it is obvious that the act of going into voluntary liquidation on the part of the Union National Bank did not, and was not intended to, affect the relations of the parties otherwise than as indicated by the contract and the complementary resolutions of December 15, 1931, above mentioned.

From and after the expiration of the two-year period of liquidation preliminary to the accounting date fixing the deficit in the assets to meet the amount of liabilities of the Union National Bank assumed by the Atlantic City National Bank, (and incidentally fixing the indebtedness or liability of the Union National Bank to the Atlantic City National Bank) the Atlantic City National Bank unquestionably had the right to defer the enforcement of its claim or debt against the Union National Bank until just prior to the expiration of the State statute of limitations fixing the period within which an action to enforce the debt or obligation arising under the contract must be brought. The Atlantic City National Bank was entitled, at least during that period, to continue with the liquidation of the assets and apply the proceeds upon its claim against the Union National Bank.

The Atlantic City National Bank could thus defer within the limits of the applicable State statute of limitations the filing of proceedings under 12 U. S. C., sec. 65, to establish and have the Court fix such assessment liability of the shareholders of the Union National Bank as the Court, in the discretion necessarily vested in it by law, might determine to be necessary to meet the outstanding obligation of the Union National Bank to the Atlantic City National

Bank. Until such judgment should be rendered by the Court in such proceedings (so far as any action which might have been brought by the Atlantic City National Bank would be concerned) it necessarily results (following by analogy *McClaine* v. *Rankin*, *Pufahl* v. *Parks*, and *Forrest* v. *Jack*, *supra*) that the assessment liability of the stockholders of the Union National Bank would not become absolute and enforceable except by reason of the judgment of the Court determining, first, the necessity for an assessment and, second, the percentage or amount of assessment required to meet the claim of the Atlantic City National Bank against the Union National Bank.

It should also be borne in mind at this point that a creditor of an insolvent national bank does not have a direct claim against the stockholders thereof. The status of the stockholder in this connection is indicated by *McClaine* v. *Rankin*, *supra*, at page 161, wherein it is stated:

> "But the words of Sec. 5151 (12 U. S. C., Sec. 63) do not mean that the stockholder promises the creditor as surety for the debts of the corporation, *but merely impose a liability on him as secondary to those debts*, which debts remain distinct, *and to which the stockholder is not a party*. The liability is a consequence of the breach by the corporation of its contract to pay, and is collateral and statutory. (Italics and insert ours.)

It would seem obvious, in view of the foregoing, that the rights of the Atlantic City National Bank in the premises could not be affected by the entirely collateral fact that Petitioner, as the owner of ten shares of stock in the Union National Bank, filed personal proceedings in bankruptcy, and that in the absence of a judgment establishing and fixing assessment liability under the procedure above outlined the Atlantic City National Bank *could not* properly file proof of claim in the bankruptcy proceedings of Petitioner.

On page 8 of Petitioner's Reply Brief, he states that Slaughter, the former receiver of the Union National Bank, knew that a maximum assessment was to be made against

the Union National Bank before said assessment was levied. The Petitioner's statement in this connection is entirely immaterial and irrelevant so far as concerns the issues of the instant case, but it may be noted in passing that Petitioner fails to state that Slaughter had this knowledge on or about December 6, 1933, (R. 43-45) which was but seven days before the Comptroller of the Currency appointed a receiver for the Union National Bank and more than seven months after the Petitioner's adjudication in bankruptcy.

II.

CONCLUSION.

It is considered that the other matters dealt with in Petitioner's Reply Brief have either been adequately covered in Respondent's main Brief or else require no comment here.

In the final analysis, it would seem that there are two controlling issues before this Court:

(1) Whether the assessment liability levied in the instant case is statutory or contractual. If it is determined that the assessment liability is statutory, this disposes of the case. If it is found that the assessment liability is contractual, the remaining important question is—

(2) Whether the assessment levied by the Comptroller of the Currency on January 8, 1934, against Petitioner was discharged in the bankruptcy proceedings filed by him on April 21, 1933.

As to the latter question, Petitioner has not at any time questioned the *validity* of the assessment; he has not attempted in this or any other proceeding to have said assessment set aside; he merely contends that the assessment so levied cannot be effective as to him in view of his discharge in bankruptcy on July 31, 1933. It would seem entirely clear that the assessment levied on January 8, 1934, was not discharged by the bankruptcy proceedings of Petitioner filed on April 21, 1933, for the reasons herein stated and also more fully described in Respondent's main Brief.

On page 17 of Respondent's main Brief reference is made to annual reports of the Comptroller of the Currency to Congress showing national banks in receivership wherein depositors and creditors have been paid 100 per cent without the levy of an assessment. Reference was also made in this connection to 12 U. S. C., Sec. 197. As a matter of convenience there will be found in the appendix hereto extracts from the annual reports of the Comptroller of the Currency to Congress for the years 1929 to 1936, both inclusive, indicating the receivership banks wherein either no assessment at all was levied or less than 100 per cent assessment was levied. The page of the report in each instance is indicated with the exception of the report for 1936 which is not yet in printed form although it has been formally transmitted to Congress and is now being printed. The pertinent portions of the above-mentioned statute (12 U. S. C., Sec. 197) are also contained in the appendix.

Respectfully submitted,

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APPENDIX.

Section 57n of the Bankruptcy Act as amended May 27, 1926, (11 U. S. C. section 93n):

"Claims shall not be proved against a bankrupt estate subsequent to six months after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: *Provided,* That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer. (As amended May 27, 1926, c. 406, sec. 13, 44 Stat. 666.)"

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12 U. S. C. 197:

"Whenever any association shall have been or shall be placed in the hands of a receiver, as provided in section 192 and other sections of this Code, and when, as provided in section 194 thereof, the Comptroller of the Currency shall have paid to each and every creditor of such association, not including shareholders who are creditors of such association, whose claim or claims as such creditor shall have been proved or allowed as therein prescribed, the full amount of such claims, and all expenses of the receivership and the redemption of the circulating notes of such association shall have been provided for by depositing lawful money of the United States with the Treasurer of the United States, the Comptroller of the Currency shall call a meeting of the shareholders of such association * * * At such meeting the shareholders shall determine whether the receiver shall be continued and shall wind up the affairs of such association, or whether an agent shall be elected for that purpose, * * * the comptroller and the receiver shall thereupon transfer and deliver to such agent all the undivided or uncollected or other assets of such association then remaining in the hands or subject to the order and control of said comptroller and said receiver, or either of them; * * *"

Extracts from the Annual Reports of the Comptroller of the Currency for the years 1929 to 1936, both inclusive, showing the receiverships where assessments of less than 100 per cent were levied and, as a result of the liquidation, the amount of cash or assets which were returned to shareholders' agents under 12 U. S. C. sec. 197:

Page of Report	Year Ending	Bank and Location	Assessment	Assets Returned to Shareholders' Agents	Cash Returned to Shareholders' Agents
	10/31/29	None			
	10/31/30	None			
	10/31/31	None			
208	10/31/32	First N.B., Uniontown, Pa.	None		$800,000
	10/31/33	None			
370	10/31/34	First N.B., Buena Vista, Colorado	60%	$27,306	66
362	10/31/35	First N.B., Glenvil, Nebraska	None	27,385	1,165
366		First N.B., Havensville, Kansas	None	38,036	754
370		Hamilton Co. N.B., Cleves, Ohio	None	26,589	5,118
374		Brandon N.B., Brandon, Vermont	25%	59,227	20,254
	10/31/36	Standard N.B., Chicago, Illinois	50%	68,129	23,827
		Whiteland N.B., Whiteland, Indiana	None	34,437	2,249
		Farmers N.B., Garner, Iowa	None	31,458	4,351
		First N.B., Bellevue, Iowa	None	41,493	4,895
		First N.B. in Webster Grove, Iowa	None	71,521	7,267
		Harveysburg N.B., Harveysburg, Ohio	None	4,720	000
		First N.B., Bradford, Ohio	None	131,320	5,391
		First N.B., Dickinson, Texas	75%	19,767	299
		Wabash N.B., Wabash, Indiana	30%	000	10,360

OPINION

SUPREME COURT OF THE UNITED STATES.

No. 575.—October Term, 1936.

William Elmer Brown, Jr., Petitioner, *vs.* Edward J. O'Keefe, Receiver of the Union National Bank of Atlantic City, New Jersey.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[March 29, 1937.]

Mr. Justice Cardozo delivered the opinion of the Court.

In a suit for the enforcement of the personal liability imposed by the statute then in force upon shareholders in national banks, petitioner, the defendant in the suit, disclaimed liability, first, upon the ground that before the assessment of the shareholders his ownership of the shares was divested by the filing of a bankruptcy petition and the appointment of a trustee thereunder, and, second, upon the ground that if ownership continued, liability was extinguished by virtue of a discharge in bankruptcy. Whether the defense should have prevailed is now to be determined.

Petitioner was adjudicated a bankrupt on April 21, 1933, and on July 31, 1933, was granted a discharge. At the filing of the bankruptcy petition he was the owner of ten shares of stock of the Union National Bank of Atlantic City, New Jersey. Since September 30, 1931, the Union bank had been in course of voluntary liquidation (under R. S. §§ 5220 and 5221; 12 U. S. C. §§ 181, 182), the Atlantic City National Bank being the liquidating agent. The terms of liquidation are defined by an agreement. Union sold to Atlantic all its assets of every kind for $1,686,977.63, which the buyer was to pay through an assumption of the seller's liabilities. The seller covenanted that the assets had a value equal to the price, and bound itself to pay the deficiency, if any should ensue. To this there was to be an exception in the case of the banking house and fixtures, which were to be taken at a valuation of $353,000, irrespective of the outcome. The amount of the seller's liability was to be fixed at the expiration of two years (i.e. on September 30, 1933), at which time all notes then uncollected were to be reckoned as losses. Before that time arrived, the liquidating bank met with

troubles of its own. In January 1933, it was declared to be insolvent by the Comptroller of the Currency, and a receiver was appointed to wind up its affairs. In December, 1933, Union also was declared insolvent, and the receiver then appointed is the respondent in this court. Valuing the uncollected assets, the Comptroller found it necessary to enforce the personal liability laid upon the shareholders (R. S. § 5151; 12 U. S. C. § 63; 38 Stat. 273; 12 U. S. C. § 64), and by an order made and filed on January 8, 1934, assessed them to the amount of the par value of the shares. The receiver has sued the petitioner as one of the shareholders of Union to recover that assessment.

In defense of the suit petitioner asserts, as we have seen, that the ownership of the stock was divested by the bankruptcy, and also that liability was barred, if ownership remained. To estimate correctly the worth of these defenses we must have some other facts before us. The record shows that on October 27, 1933, by order of a referee, the trustee in bankruptcy was "authorized and directed to abandon all title to and to disclaim all the interest of the bankrupt in" the ten shares of Union National Bank, now the subject of this suit. There is no suggestion that in the interval between adjudication and disclaimer, the trustee had done anything betokening acceptance. The record also shows, in the form of an affidavit accepted by the court, that the bankrupt in his list of liabilities included the liability to assessment on his shares of Union stock, and that in his schedule of creditors he included Union and Atlantic as well as the receiver for Atlantic, then in charge of its affairs. The same affidavit tells us that promptly upon the transfer of the assets in September, 1931, the liabilities assumed by Atlantic were paid to the last dollar; that at the time of the defendant's bankruptcy Union had no debts or liabilities except the debt or liability to the liquidating agent; and that even before the bankruptcy the fact had been definitely ascertained that the liquidation of the Union assets would result in a deficiency which would require an assessment of the stockholders up to the maximum amount of the par value of the shares.[1] The estimate was not impracticable, for

[1] "At the time that I was adjudicated a bankrupt as aforesaid it had been determined and from then until now it has been definitely determined and known that said Union National Bank was insolvent. Said Union National Bank was throughout all of that time and ever since September 30, 1931, had been closed to business. Also at said time it had been determined and throughout said period it was definitely known that the assets of said Union National

about a year and seven months had passed since liquidation had begun, and only about five months were left before it would be deemed to be complete.

Upon these facts, established by the pleadings and supporting affidavits, the receiver moved for judgment. The District Court held the defenses insufficient, and gave judgment against the defendant for the amount of the assessment. 16 F. Supp. 494. There was an appeal to the Court of Appeals for the Third Circuit where the judgment was affirmed. 85 F. (2d) 885. An important question of bankruptcy law being involved, a writ of certiorari issued from this court.

We dismiss with a few words the petitioner's contention that at the moment of the bankruptcy he lost the title to the shares, and became relieved thereby of the liabilities attendant upon ownership, though his name was left continuously on the stock book of the bank. Cf. *Richmond* v. *Irons*, 121 U. S. 27, 58; *Matteson* v. *Dent*, 176 U. S. 521. Whatever title or inchoate interest may have passed to the trustee was extinguished by relation as of the filing of the petition when the trustee informed the court that the shares were burdensome assets, and was directed by the court to abandon and disclaim them. *American File Co.* v. *Garrett*, 110 U. S. 288, 295; *Sparhawk* v. *Yerkes*, 142 U. S. 1, 13; *Sessions* v. *Romadka*, 145 U. S. 29, 39; *Dushane* v. *Beall*, 161 U. S. 513; *First National Bank* v. *Lasater*, 196 U. S. 115. In such case "the title stands as if no assignment had been made." *Sessions* v. *Romadka, supra*, p. 52. Cf. *Mills Novelty Co.* v. *Monarch Tool & Mfg. Co.*, 49 F. (2d) 28, 31; *In re Frazin*, 183 Fed. 28, 32; *Kirstein Holding Co.* v. *Bangor Veritas, Inc.*, 131 Me. 421, 424. A precise analogy is found in the law of gifts and legacies. Acceptance is presumed, but rejection leaves the title by relation as if the gift had not been made. See *Albany Hospital* v. *Albany Guardian Society*, 214 N. Y. 435, 441, 442, collecting many cases. For the purposes of the case at hand the result will be the same whether title is conceived of as remain-

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Bank were insufficient in value to liquidate at a sum equal to the value placed upon them by said agreement of September 30, 1931.

"Also at the time that I was adjudicated a bankrupt as aforesaid it had been determined and from then until now it has been definitely determined and known that an assessment and requisition upon the shareholders of said Union National Bank to the total par value of the amount of stock outstanding would be necessary to pay the debts and claims of said bank." Extracts from petitioner's affidavit.

ing in the bankrupt or as afterwards reverting. *Albany Hospital* v. *Albany Guardian Society, supra,* pp. 443, 445. In either view it is his after disclaimer by the trustee, wherever it may have been while acceptance was uncertain. *American File Co.* v. *Garrett, supra.*

The petitioner being held to be the owner of the shares, we pass to the closer question whether the effect of the discharge in bankruptcy was to extinguish the personal liability that was attached to his ownership as a statutory incident.

Liabilities are not discharged in bankruptcy unless claims thereon exist in favor of claimants whose identity is determinable at the date of the petition. *Zavelo* v. *Reeves,* 227 U. S. 625, 631; *Everett* v. *Judson,* 228 U. S. 474, 479. If the Union bank at that date had been a going concern, the possibility that it might later become insolvent or resort to liquidation, would not have furnished an occasion for stripping the shares of their statutory incidents by the device of a discharge in bankruptcy. In such a situation there would be no claim to be proved and no one capable of proving it. But at the date of this petition, the Union bank was not a going concern with the liability of shareholders a latent possibility. It was in course of liquidation by a voluntary liquidator. Not only was it in liquidation, but according to the evidence it was already known to be insolvent. Liquidation coupled with insolvency is the critical event which is capable of transforming a potential liability into one presently enforcible, as soon as a qualified claimant appears upon the scene. The method of winding up determines who the spokesman for the claim shall be. If a bank is in course of liquidation by the Comptroller of the Currency, the personal liability of stockholders is enforcible upon the direction of the Comptroller, at the suit of a receiver. Act of June 30, 1876, c. 156, § 1, 19 Stat. 63; 12 U. S. C. § 191. Cf. 12 U. S. C. §§ 63, 64. If the bank is in course of liquidation by a voluntary liquidator, the liability is enforcible by a creditor or creditors, suing for themselves and for others similarly situated. Act of June 30, 1876, c. 156, § 2, 19 Stat. 63; 12 U. S. C. § 65. Cf. 12 U. S. C. § 181. We have no occasion to inquire whether in the absence of an assessment by the Comptroller of the Currency the statutory liability may be enforced by a receiver through the medium of a claim in bankruptcy. Cf. *Erickson* v. *Richardson,* 86 F. (2d) 963. That question is not

here. An assessment by the Comptroller, even if a necessary preliminary to a suit by a receiver when a bank is in the course of involuntary liquidation, is not a condition precedent, in cases of voluntary liquidation, to proceedings in behalf of creditors. No adequate reason occurs to us, and none, we think, is stated in the arguments of counsel, why a court of bankruptcy is then incompetent to liquidate the amount of the indebtedness effectively and speedily, and give relief accordingly. Cf. *Cunningham* v. *Commissioner of Banks,* 249 Mass. 401, 426; *United States* v. *Illinois Surety Co.,* 226 Fed. 653, 662-663.

In saying this we are not unmindful that a comprehensive suit in equity is commonly the proper remedy against shareholders where insolvency becomes manifest in voluntary liquidation. 12 U. S. C. § 65. The remedy does not exclude the presentation of a proof of claim in bankruptcy, the amount to be liquidated under the direction of the court by bill in equity or otherwise. *Cunningham* v. *Commissioner of Banks, supra; United States* v. *Illinois Surety Co., supra; King* v. *Pomeroy,* 121 Fed. 287; *Irons* v. *Manufacturer's Nat. Bank,* 17 Fed. 308, 314; 27 Fed. 591. Cf. *Hightower* v. *American Nat. Bank,* 263 U. S. 351; *Wyman* v. *Wallace,* 201 U. S. 230. By the mandate of the statute (Bankruptcy Act § 63b; 11 U. S. C. § 103b): "Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against the estate." The result is to invest the court with a discretionary power that can be fitted to the needs of varying situations. *Maynard* v. *Elliott,* 283 U. S. 273. Cf. *Foust* v. *Munson S. S. Lines,* 299 U. S. 77, 83. A holding that a creditor is disabled from making proof in bankruptcy till a suit in equity against the shareholders has been brought to a decree would have unfortunate results. Today it is the bankrupt who is asserting the provable quality of such a claim in order to preserve for himself the benefit of a discharge. Tomorrow it may be a creditor who unless he is given that opportunity may lose his dividend from the assets and find his suit in equity illusory. In that predicament the malleable processes of courts of bankruptcy give assurance of a remedy that can be moulded and adapted to the needs of the occasion. *Cunningham* v. *Commissioner of Banks, supra.*

Liquidation being possible, the claim is not defeated though there was uncertainty as to its amount at the filing of the petition. *May-*

nard v. *Elliott, supra.* Yet even the amount was certain, if we are to credit the defendant's statement. By this it appears that long before the bankruptcy the necessity for an assessment to the amount of the par value of the shares had become obvious to the liquidating agent and indeed to all concerned. The facts are far removed from those in *Miller* v. *Irving Trust Co.*, 296 U. S. 256, where the claim had its origin in the covenants of a lease. For historical causes such covenants are *sui generis* (*Manhattan Properties* v. *Irving Trust Co.*, 291 U. S. 320; *Gardiner* v. *Butler & Co.*, 245 U. S. 603), but the analogy is still imperfect if that distinction be ignored. There the only cause of action belonging to the claimant was for a deficiency that was dependent upon unpredictable events.[1] Here the progress of the liquidation had already brought about a deficiency too great to be corrected by any unexpected windfall. This at least is the situation as the petitioner describes it. What infusion of contingency will vitiate a claim is at best a question of degree (*Maynard* v. *Elliott, supra*, p. 278), though there is a leaning toward allowance in aid of the purpose of the statute to relieve the honest debtor. *Williams* v. *U. S. Fidelity Co.*, 236 U. S. 549, 554-555; *Central Trust Co.* v. *Chicago Auditorium*, 240 U. S. 581, 591. To all this we add that the uncertainty, if there was any, as to the exact amount of the assessment was to be dispelled at the farthest by September 30, 1933, less than six months later, for obligations then unpaid were to be classified as losses. Cf. Bankruptcy Act, § 57n; 11 U. S. C. § 93n. Upon the facts of this case the impediments to a prompt ascertainment of the liability of shareholders were unsubstantial, if not imaginary.

Other objections are made to the operation of the discharge, but they need not detain us long.

There is argument that a claim against a stockholder is not provable in bankruptcy for the reason that it is founded on a statutory liability not subject to discharge. Bankruptcy Act § 63; 11 U. S. C. § 103. True indeed it is that the liability is created by a statute, and not solely by agreement. *McClaine* v. *Rankin*, 197 U. S. 154, 159, 161; *Christopher* v. *Norvell*, 201 U. S. 216, 225, 226. No disclaimer by the stockholder would be effective to avoid it. Even

[1] "Under the clause in question, it was, at the time the petition in bankruptcy was filed, uncertain, a mere matter of speculation, whether any liability ever would arise under it." Miller v. Irving Trust Co., 296 U. S. 256, 258.

so, the liability, created though it is by statute, is quasi-contractual in its origin and basis. *Chisholm* v. *Gilmer*, 299 U. S. 99, 102; *Shriver* v. *Woodbine Bank*, 285 U. S. 467, 477; *Coffin Brothers* v. *Bennett*, 277 U. S. 29, 31; *Bernheimer* v. *Converse*, 206 U. S. 516, 529; *Christopher* v. *Norvell, supra; McClaine* v. *Rankin, supra*, p. 159; *McDonald* v. *Thompson*, 184 U. S. 71, 74. Cf. *Erickson* v. *Richardson, supra*. It is an incident affixed by law to the contract of membership between shareholder and bank. *Ibid.* A liability upon quasi-contract is one upon an "implied contract", and so provable in bankruptcy (Bankruptcy Act § 63 (4); 11 U. S. C. § 103 (4); *Crawford* v. *Burke*, 195 U. S. 176; *Tindle* v. *Birkett*, 205 U. S. 184; *Davis* v. *Aetna Acceptance Co.*, 293 U. S. 328, 331), if the other conditions of allowance are found to be fulfilled.

Finally argument is possible that the discharge is ineffective against the creditors of the bank for the reason that only a single creditor of Union was listed in the schedules. This, however, is unimportant if the creditor so listed (the liquidating agent) was in fact the only creditor, as the petitioner insists it was. Cf. *Longfield* v. *Minnesota Savings Bank*, 95 Minn. 54. If in fact there were other creditors whose names have been omitted, the burden rests on the respondent to make proof of such omission. *Hill* v. *Smith*, 260 U. S. 592, 595. The conclusion may well follow, if the omission shall be proved, that as to any creditors not listed the discharge is without effect.

Whether the petitioner will be able to make good the allegations of his answer, amplified and explained by the supporting affidavits, is not to be predicted now. Enough for present purposes that there are issues to be tried.

The decree should be reversed and the cause remanded for further proceedings in accord with this opinion.

Ordered accordingly.

A true copy.

Test:

Clerk, Supreme Court, U. S.